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M E M O R A N D U M

PERSONNEL MEMO 00 - 14

TO: Cabinet Secretaries
Agency Heads
Personnel Executives

FROM: 
Carol M. Palmore, Secretary

SUBJECT: Dual Employment

Agencies are required, by 101 KAR 2:095, to request the approval of this office before hiring a current state employee into a second state government position. It has come to our attention that not all agencies are complying with the provisions of this Administrative Regulation. The procedures in this regulation assist us in making sure that state government does not violate federal overtime law and regulations.

Allowing one person to hold two positions in state government is commonly referred to as dual employment. I realize that agencies are not always aware when one of their employees has been hired in a second state job. Therefore, both the primary and secondary employers will be notified when we approve dual employment. The primary employer is the agency in which the employee is employed at the time of the request. The secondary employer is the agency in which the employee is requesting to be hired.

The absence of communication between the primary and secondary employer often creates a situation in which the employee is not compensated appropriately when he or she works in excess of 40 hours in a workweek. For example, if an employee in the Department for Juvenile Justice, who is employed as a Youth Worker, is subsequently hired in a second position as a Nurse Aide State Registered in the Department for Mental Health, this individual is dually employed. In addition the person is



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employed in two positions that are both subject to the overtime requirements of the Federal Fair Labor Standards Act. This dual employment entitles the individual to time and one half after forty hours of work during a workweek. The overtime compensation that the individual would be entitled to would be in accordance with the provisions of the Federal Fair Labor Standards Act. For example, when an employee in a single workweek works at two or more different types of work for which different straight-time rates have been established, the employee's regular rate for that week can be calculated as the *weighted average* of the two rates. That is, the earnings from all such rates are added together and this total is then divided by the total number of hours worked at all jobs.

The US Department of Labor, in a wage and hour opinion letter dated June 17, 1994, determined that state government, including all of its departments and agencies, is a single employer under the Fair Labor Standards Act. Therefore, an individual employed by more than one agency in state government would technically be working for one employer, i.e., the Commonwealth of Kentucky.

The Personnel Cabinet wants to ensure that agency appointing authorities are made aware of the fiscal and personnel ramifications of dual employment. This is particularly important in situations in which BOTH jobs are subject to the overtime provisions of the Federal Fair Labor Standards Act.

If you have any questions about this issue, please contact Herb Sheeting, Commissioner, Department of Personnel Administration, at 502-564-2428.